

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ROBERT C. ECKSTEIN,

Charging Party,

v.

POLICE OFFICERS RESEARCH
ASSOCIATION OF CALIFORNIA,

Respondent.

Case No. S-CO-47-S

PERB Decision No. 644-S

December 18, 1987

ROBERT C. ECKSTEIN,

Charging Party,

v.

CALIFORNIA ASSOCIATION OF FOOD
AND DRUG OFFICIALS,

Respondent.

Case No. S-CO-49-S

Appearances; Anthony T. Caso, Attorney, Pacific Legal
Foundation, for Robert C. Eckstein.

Before Hesse, Chairperson; Porter and Cordoba, Members.

DECISION

HESSE, Chairperson: Charging party appeals the dismissals of his unfair practice charges against Police Officers Research Association of California (PORAC) and California Association of Food and Drug Officials (CAFDO), alleging that the two respondents violated the Ralph C. Dills Act,¹ Government Code

¹Formerly known as the State Employer-Employee Relations Act, the Ralph C. Dills Act is codified at Government Code

section 3519.5(b), as well as a number of other sections of the Ralph C. Dills Act and other laws.² The regional attorney in the attached letters dismissed the charges because neither PORAC nor CAFDO is the exclusive representative for charging party's bargaining unit.

We concur in the regional attorney's analysis. In King City High School District Association, et al. (1982) PERB Decision No. 197, review pending, California Supreme Court, the Public Employment Relations Board ruled that the proper respondent for an agency fee challenge is the exclusive representative. Charging party's appeal of this dismissal seems predicated on the fact that his unfair practice charge against the exclusive representative for his unit, California Union of Safety Employees (CAUSE); was also dismissed; although a partial complaint did issue (Case No. S-CO-21-S). Inasmuch as we have today reversed the partial dismissal of the charge against CAUSE, permitting the allegations concerning the use of agency fee monies by PORAC and CAFDO to be litigated against the responsible exclusive representative (i.e., CAUSE), the

section 3512 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

²Charging party listed Government Code sections 3513(j), 3515.5, 3515.6, 3515.7, 3515.8, California Constitution, Article I, sections 1, 2, 3; 42 U.S.C. section 1983; US Constitution Amendments I and XIV. All of these laws could be actionable under PERB, but only if a prima facie violation of 3519.5(b) is alleged. Here, no such violation is shown, and thus, we need not consider whether other laws allegedly were violated.

arguments raised on appeal are moot.

ORDER

The unfair practice charges in Case Nos. S-CO-47-S and S-CO-49-S are hereby DISMISSED without leave to amend.

Members Porter and Cordoba joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office
1031 18th Street
Sacramento, California 95814
(916) 322-3088



May 14, 1985

Ronald A. Zumbrun
Anthony T. Caso
Attorneys
Pacific Legal Foundation
555 Capitol Mall. Suite 350
Sacramento. CA 95814

Re: Robert Eckstein v. Police Officers Research Association of California
Unfair Practice Charge No. S-CO-47-S

Dear Messrs. Zumbrun and Caso:

The above-referenced charge alleges that the Police Officers Research Association of California (PORAC) has: (1) performed employee representative functions. (2) accepted a portion of the monthly fair share fee paid to the California Union of Safety Employees (CAUSE). (3) used part of the agency fee paid to it by CAUSE to finance political and ideological activities. (4) operated a rebate program which failed to allow for money contributed to the PORAC Legal Defense Fund and lobbying expenditures and which operated similar to one held invalid by the United States Supreme Court in Ellis v. Railway Clerks U.S. _____. 80 L.Ed.2d 428 (1984). (5) refused to provide information concerning its expenditure of fair share fees to the Charging Party, and (6) failed to provide the Charging Party a hearing prior to collection of the agency fee by payroll deduction. This conduct is alleged to violate sections 3513(j). 3515.5. 3515.6. 3515.7. and 3515.8 of the State Employer-Employee Relations Act (SEERA); the California Constitution. Article I. sections 1. 2 and 3; 42 U.S.C, section 1983; and the United State Constitution Amendments I and XIV.

I indicated to you in my letter dated May 6. 1985. that the above-referenced charge did not state a prima facie case, and that unless you amended the charge to state a prima facie case, or withdrew it prior to May 13. 1985. it would be dismissed. More specifically. I informed you that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge accordingly.

Ronald A. Zumbun
Anthony T. Caso
May 14. 1985
Page 2

I have not received either a request for withdrawal or an amended charge and an therefore dismissing this charge based on the facts and reasons contained in my May 6. 1985. letter which is attached as Exhibit 1.

Pursuant to Public Employment Relations Board regulation section 32635 (California Administrative Code, title 8. part III), you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

Right to Appeal

You may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal (section 32635(a)). To be timely filed, the original and five (5) copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on June 3, 1985, or sent by telegraph or certified United States mail postmarked not later than June 3, 1985, (section 32135). The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento. CA 95814

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five (5) copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal (section 32635(b)).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself (see section 32140 for the required contents and a sample form). The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Ronald A. Zumbrun
Anthony T. Caso
May 14, 1985
Page 3

Extension of Time

A request for an extension of time in which to file a document with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (section 32132).

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Very truly yours.

DENNIS M. SULLIVAN
General Counsel

By _____
Robert Thompson
Regional Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Suite 102
Sacramento, California 95814
(916) 322-3198



May 6, 1985

Ronald A. Zumburn
Anthony T. Caso
Attorneys
Pacific Legal Foundation
555 Capitol Mall, Suite 350
Sacramento, CA 95814

Re: Robert Eckstein v. Police Officers Research Association of
California
Unfair Practice Charge No. S-CO-47-S

Dear Messrs. Zumburn and Caso:

The above-referenced charge alleges that the Police Officers Research Association of California (PORAC) has: (1) performed employee representative functions, (2) accepted a portion of the monthly fair share fee paid to the California Union of Safety Employees (CAUSE), (3) used part of the agency fee paid to it by CAUSE to finance political and ideological activities, (4) operated a rebate program which failed to allow for money contributed to the PORAC Legal Defense Fund and lobbying expenditures and which operated similar to one held invalid by the United States Supreme Court in Ellis v. Railway Clerks _____ U.S. _____, 80 L.Ed.2d 428 (1984), (5) refused to provide information concerning its expenditure of fair share fees to the Charging Party, and (6) failed to provide the Charging Party a hearing prior to collection of the agency fee by payroll deduction. This conduct is alleged to violate sections 3513(j), 3515.5, 3515.6, 3515.7, and 3515.8 of the State Employer-Employee Relations Act (SEERA); the California Constitution, Article I, sections 1, 2 and 3; 42 U.S.C, section 1983; and the United State Constitution Amendments I and XIV.

My investigation revealed the following facts. Mr. Eckstein is employed by the State of California in a classification contained in bargaining unit 7 which is exclusively represented by CAUSE. CAFDO is a member organization of CAUSE. CAUSE is affiliated with PORAC and the National Association of Police Organizations (NAPO). Mr. Eckstein is not a member of CAUSE, CAFDO, PORAC or NAPO. CAUSE began collecting fair share fees from bargaining unit employees who were not members of CAUSE on March 1, 1983.

EXHIBIT I

Ronald A. Zumbrun
Anthony T. Caso
May 6, 1985
Page 2

As an administrative agency, the Public Employment Relations Board (PERB) is limited to deciding issues raised under the specific acts entrusted to it. The SEERA, under which this charge is brought, is one such act. While PERB should endeavor to "harmonize" SEERA with the constitution, it also must decide cases arising out of the SEERA on the assumption that the Act suffers no constitutional infirmity. California Constitution, Article III, section 3.5.

Based on the facts described above, this charge does not state a prima facie violation of the SEERA for the reasons which follow.

Allegation No. 1

CAUSE is the recognized exclusive representative of Unit 7 employees and is affiliated with PORAC. Charging Party alleges on information and belief that PORAC has a contract with CAUSE to perform bargaining functions for CAUSE. Even if such a contract exists, it does not transform PORAC into the exclusive representative. The SEERA does not prevent employee organizations from entering into agreements with other organizations for services. Ultimately the exclusive representative CAUSE is responsible for the bargaining process and its product. Without more evidence, it is impossible to find that PORAC is acting as the exclusive representative of unit 7 employees.

Allegation No. 2, 3, and 4

Charging Party alleges that it is a violation of section 3515.6 of the SEERA for CAUSE to share any portion of the agency fee with PORAC.¹ There are no facts which show that the State of California is deducting monies from Mr. Eckstein and paying them directly to PORAC. Rather, any money received by PORAC is paid to it by CAUSE. Thus, there is no evidence that PORAC

¹SEERA section 3515.6 reads:

All employee organizations shall have the right to have membership dues, initiation fees, membership benefit programs, and general assessments deducted pursuant to

Ronald A. Zumbun
Anthony T. Caso
May 6, 1985
Page 3

violated section 3515.6. Any allegation that CAUSE inappropriately spent agency fees it collected should be pursued as an unfair practice charge against CAUSE.

As a general matter, PERB has ruled in Cumero v. King City High School District Association (3/3/82) PERB Decision No. 197, that payment of agency fee monies to organizations with which the exclusive representative is affiliated does not violate the Educational Employment Relations Act (EERA).

In addition, the Charging Party alleges that the agency fee rebate procedure does not include money which was paid by CAUSE to the PORAC Legal Defense Fund, for lobbying or for political and ideological activities. SEERA section 3515.8 reads in pertinent part:

Any state employee who pays a fair share fee shall have the right to demand and receive from the recognized employee organization, under procedures established by the recognized employee organization, a return of any part of that fee paid by him or her which represents the employee's additional pro rata share of expenditures by the recognized employee organization that is either in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment, or applied towards the cost of any other benefits available only to members of the recognized employee organization.

CAUSE is the only recognized employee organization for Unit 7 employees. Thus, it is CAUSE rather than PORAC which is responsible' for the rebate procedure and the amount of money which is returned to individual employees by way of rebate.

subdivision (a) of Section 1152 and Section 1153 until such time as an employee organization is recognized as the exclusive representative for employees in an appropriate unit, and then such deductions as to any employee in the negotiating unit shall not be permissible except to the exclusive representative.

Ronald A. Zumbrun
Anthony T. Caso
May 6, 1985
Page 4

Allegation No. 5

Charging Party alleges that PORAC has refused to provide information on the use of fair share fees and that such constitutes a violation of the duty of fair representation. Although SEERA does not contain a specific section specifying an employee organization's duty of fair representation, such a duty can be implied from the fact that SEERA provides for exclusive representation. Government Code sections 3513(b), 3515.5. Norgard v. California State Employees Association (12/7/84) PERB Decision No. 451-S. In addition, section 3515.7(g) provides:

An employee who pays a fair share fee shall be entitled to fair and impartial representation by the recognized employee organization. A breach of this duty shall be deemed to have occurred if the employee organization's conduct in representation is arbitrary, discriminatory, or in bad faith.

In any event, this duty is owed to individual employees by the exclusive representative. PORAC is not the exclusive representative and this allegation should be redirected to CAUSE.

In addition, PERB held in Kimmett v. Services Employees International Union, Local 99 (10/19/79) PERB Decision No. 106:

. . . the statute clearly indicates that the appropriate procedure for remedying a violation of section 3546.5 is not to file an unfair practice charge against the employee organization, but to file a petition with PERB seeking an order compelling compliance.

Although that case arose under the Educational Employment Relations Act (EERA), it is equally applicable to cases under SEERA as sections 3546.5 of the EERA and 3515.7(e) of the SEERA are nearly identical. Therefore, the proper manner to seek compliance with section 3515.7(e) of SEERA is found in PERB Regulation 32125(b) and (c). Again, however, these financial filing requirements run only to the exclusive representative, CAUSE, and not PORAC.

Ronald A. Zumbun
Anthony T. Caso
May 6, 1985
Page 5

Charging Party argues that PERB's determination concerning "the burden of proof" in Cumero v. King City High School District Association (3/3/82) PERB Decision No. 197 supports the argument that the exclusive representative has a duty to provide financial information to employees upon request. King City, however, did not hold that exclusive representatives owe a duty of disclosure to individual employees other than the annual financial report required by the SEERA². Thus, no prima facie violation of SEERA is presented.

Allegation No. 6

Charging Party alleges that PORAC has failed to provide a hearing prior to the deduction of fair share fees from Mr. Eckstein's salary. As discussed above, PORAC is not responsible for the deduction of the agency fee and, therefore, is not responsible to provide a hearing prior to the deduction of the agency fee. This allegation is more correctly directed to the exclusive representative, CAUSE.

²The section referenced by Charging Party is contained in part on page 28 of that decision and reads:

The Board recognizes that detailed information concerning the use of service fees may be with the representative organization's exclusive knowledge. Nevertheless, sufficient information is almost always to nonmembers. Insurance programs, philanthropic activities, social events and political activity, as well as preparation for and the progress of collective negotiations, are usually publicized in organizational literature and openly discussed among unit employees and may be reported in local media. Charges based on such information, even if made upon the information and belief of the charging party, may suffice to establish a prima facie basis for issuance of a complaint. Further, a complete report of its financial transactions must be filed with PERB annually by each exclusive representative and, as a public document, would be available to nonmembers (section 3546.5 and Rule 32125).

Ronald A. Zumbun
Anthony T. Caso
May 6, 1985
Page 6

For these reasons, charge number S-CO-47-S, as presently written, does not state a prima facie case. If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the charge accordingly. The amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before May 13, 1985, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (916) 322-3198.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "R. T. Thompson".

Robert Thompson
Regional Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office
1031 18th Street
Sacramento, California 95814
(916) 322-3088



May 14, 1985

Ronald A. Zumbrun
Anthony T. Caso
Attorneys
Pacific Legal Foundation
555 Capitol Mall, Suite 350
Sacramento, CA 95814

Re: Robert Eckstein v. California Association of Food and Drug Officials
Unfair Practice Charge No. S-CO-49-S

Dear Messrs. Zumbrun and Caso:

The above-referenced charge alleges that the California Association of Food and Drug Officials (CAFDO) has: (1) has performed employee representative functions including the bargaining over wages with the State of California. (2) accepted a portion of the monthly fair share fee paid to the California Union of Safety Employees (CAUSE). (3) requested that CAUSE redirect a \$5.00 monthly payment from the Peace Officers Research Association of California (PORAC) Legal Defense Fund to CAFDO. (4) operated a rebate program held invalid by the United States Supreme Court in Ellis v. Railway Clerks U.S. _____. 80 L.Ed.2d 428 (1984). (5) refused to provide information concerning its expenditure of fair share fees to the Charging Party, and (6) failed to provide the Charging Party a hearing prior to collection of the agency fee by payroll deduction. This conduct is alleged to violate sections 3513(j). 3515.5. 3515.6. 3515.7. and 3515.8 of the State Employer-Employee Relations Act (SEERA); the California Constitution. Article I, sections 1. 2 and 3; 42 U.S.C, section 1983; and the United State Constitution Amendments I and XIV.

I indicated to you in my letter dated May 1, 1985. that the above-referenced charge did not state a prima facie case, and that unless you amended the charge to state a prima facie case, or withdrew it prior to May 7. 1985. it would be dismissed. This deadline was extended to May 13. 1985. More specifically. I informed you that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge accordingly.

Ronald A. Zumbrun
Anthony T. Caso
May 14. 1985
Page 2

I have not received either a request for withdrawal or an amended charge and am therefore dismissing this charge based on the facts and reasons contained in my May 1, 1985. letter which is attached as Exhibit 1.

Pursuant to Public Employment Relations Board regulation section 32635 (California Administrative Code, title 8. part III), you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

Right to Appeal

You may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal (section 32635(a)). To be timely filed, the original and five (5) copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on June 3, 1985, or sent by telegraph or certified United States mail postmarked not later than June 3, 1985, (section 32135). The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento. CA 95814

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five (5) copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal (section 32635(b)).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself (see section 32140 for the required contents and a sample form). The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Ronald A. Zumbrun
Anthony T. Caso
May 14. 1985
Page 3

Extension of Time

A request for an extension of time in which to file a document with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (section 32132).

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Very truly yours.

DENNIS M. SULLIVAN
General Counsel

By

Robert Thompson.
Regional Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD

SACRAMENTO REGIONAL OFFICE
1031 18th STREET, SUITE 102
SACRAMENTO, CALIFORNIA 95814
(916) 322-3198



May 1. 1985

Ronald A. Zumbrun
Anthony T. Caso
Attorneys
Pacific Legal Foundation
555 Capitol Mall. Suite 350
Sacramento. CA 95814

Re: Robert Eckstein v. California Association of Food and Drug Officials
Unfair Practice Charge No. S-CO-49-S

Dear Messrs. Zumbrun and Caso:

The above-referenced charge alleges that the California Association of Food and Drug Officials (CAFDO) has: (1) has performed employee representative functions including the bargaining over wage6 with the State of California. (2) accepted a portion of the monthly fair share fee paid to the California Union of Safety Employees (CAUSE). (3) requested that CAUSE redirect a \$5.00 monthly payment from the Peace Officers Research Association of California (PORAC) Legal Defense Fund to CAFDO. (4) operated a rebate program held invalid by the United States Supreme Court in Ellis v. Railway Clerks U.S. _____. 80 L.Ed.2d 428 (1984). (5) refused to provide information concerning its expenditure of fair share fees to the Charging Party, and (6) failed to provide the Charging Party a hearing prior to collection of the agency fee by payroll deduction. This conduct is alleged to violate sections 3513(j). 3515.5. 3515.6. 3515.7. and 3515.8 of the State Employer-Employee Relations Act (SEERA); the California Constitution. Article I. sections 1. 2 and 3; 42 U.S.C, section 1983; and the United State Constitution Amendments I and XIV.

My investigation revealed the following facts. Mr. Eckstein is employed by the state of California in a classification contained in bargaining unit 7 which is exclusively represented by CAUSE. CAFDO is a member organization of CAUSE. CAUSE is affiliated with PORAC and the National Association of Police Organizations (NAPO). Mr. Eckstein is not a member of CAUSE.

EXHIBIT I

Ronald A. Zumbun
Anthony T. Caso
May 1. 1988
Page 2

CAFDO. PORAC or NAPO. CAUSE began collecting fair share fees from bargaining unit employees who were not members of CAUSE on March 1. 1983.

As an administrative agency, the Public Employment Relations Board (PERB) is limited to deciding issues raised under the specific acts entrusted to it. The SEERA, under which this charge is brought, is one such act. While PERB should endeavor to "harmonize" SEERA with the constitution, it also must decide cases arising out of the SEERA on the assumption that the Act suffers no constitutional infirmity. California Constitution, Article III. section 3.5.

Based on the facts described above, this charge does not state a prima facie violation of the SEERA for the reasons which follow.

Allegation No. 1

CAUSE is the recognized exclusive representative of Unit 7 employees and CAFDO is a member organization of CAUSE. The only facts presented in support of this allegation are statements from a CAFDO newsletter which read:

THE NEW CONTRACT

As of this CAFDOGRAM. there is no contract. I feel that negotiations will be over soon since CSEA has settled. We tend to be one of the last Units to settle. Dan Walsh, your current president as well as other interested CAFDO members, have been virtually living at the bargaining table.

I have discussed many of the proposed benefits with Dan. They are exciting. CAUSE leadership will make the best contract possible.

There will be a raise, amount unknown. There will be some resolution of past contract impasses. There will be refinement of ambiguities found in the previous contract. Very soon we will have a chance to review it and vote as to its ratification. I can say no more now.

Ronald A. Zumbrun
Anthony T. Caso
May 1. 1985
Page 3

FINAL NOTES AND MESSAGES

3. I did not get any reports on CAFDO grievances other than from Sharon. Again, internal communication is weak. My role as vice-president will be to increase and monitor communication.

These facts do not demonstrate that CAFDO has assumed the role of exclusive representative. CAFDO members may also be members of CAUSE, the exclusive representative. Their participation in bargaining or grievance processing does not violate the SEERA nor does it make CAFDO the exclusive representative. Without more evidence, it is impossible to find that CAFDO is acting as the exclusive representative of unit 7 employees.

Allegation No. 2 and 4

Charging Party alleges that it is a violation of section 3515.6 of the SEERA for CAUSE to share any portion of the agency fee with CAFDO.¹ There are no facts which show that the State of California is deducting monies from Mr. Eckstein and paying them directly to CAFDO. Rather, any money received by CAFDO is paid to it by CAUSE. Thus, there is no evidence that CAFDO violated section 3515.6. Any allegation that CAUSE inappropriately spent agency fees it collected should be pursued as an unfair practice charge against CAUSE.

In addition, the Charging Party alleges that the agency fee rebate procedure does not include money which was paid by CAUSE to CAFDO. SEERA section 3515.8 reads in pertinent part:

¹SEERA section 3515.6 reads:

All employee organizations shall have the right to have membership dues, initiation fees, membership benefit programs, and general assessments deducted pursuant to subdivision (a) of Section 1152 and Section 1153 until such time as an employee organization is recognized as the exclusive representative for employees in an appropriate unit, and then such deductions as to any employee in the negotiating unit shall not be permissible except to the exclusive representative.

Ronald A. Zumbrun
Anthony T. Caso
May 1. 1985
Page 4

Any state employee who pays a fair share fee shall have the right to demand and receive from the recognized employee organization, under procedures established by the recognized employee organization, a return of any part of that fee paid by him or her which represents the employee's additional pro rata share of expenditures by the recognized employee organization that is either in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment, or applied towards the cost of any other benefits available only to members of the recognized employee organization.

CAUSE is the only recognized employee organization for Unit 7 employees. Thus, it is CAUSE rather than CAFDO which is responsible for the rebate procedure and the amount of money which is returned to individual employees by way of rebate.

Allegation No. 3

Charging Party alleges that CAFDO violated its duty of fair representation by requesting that CAUSE remit a \$5.00 fee to CAFDO rather than the PORAC legal defense fund. Although SEERA does not contain a specific section specifying an employee organization's duty of fair representation, such a duty can be implied from the fact that SEERA provides for exclusive representation. Government Code sections 3513(b). 3515.5. Norgard v. California State Employees Association (12/7/84) PERB Decision No. 451-S. In addition, section 3515.7(g) provides:

An employee who pays a fair share fee shall be entitled to fair and impartial representation by the recognized employee organization. A breach of this duty shall be deemed to have occurred if the employee organization's conduct in representation is arbitrary, discriminatory, or in bad faith.

In any event, this duty is owed to individual employees by the exclusive representative. CAFDO is not the exclusive representative and this allegation should be redirected to

Ronald A. Zumbrun
Anthony T. Caso
May 1. 1985
Page 5

CAUSE. Accordingly, no prima facie violation of this section with respect to CAFDO is present.

Allegation No. 5

Charging Party alleges that CAFDO has refused to provide information on the use of fair share fees and that such constitutes a violation of the duty of fair representation. As discussed above in allegation 3. CAFDO owes no duty of fair representation to the Charging Party. In addition. PERB held in Kimmett v. Services Employees International Union. Local 99 (10/19/79) PERB Decision No. 106:

. . . the statute clearly indicates that the appropriate procedure for remedying a violation of section 3546.5 is not to file an unfair practice charge against the employee organization, but to file a petition with PERB seeking an order compelling compliance.

Although that case arose under the Educational Employment Relations Act (EERA), it is equally applicable to cases under SEERA as sections 3546.5 of the EERA and 3515.7(e) of the SEERA are nearly identical. Therefore, the proper manner to seek compliance with section 3515.7(e) of SEERA is found in PERB Regulation 32125(b) and (c). Again, however, these financial filing requirements run only to the exclusive representative. CAUSE, and not CAFDO.

Charging Party argues that PERB's determination concerning "the burden of proof" in Cumero v. King City High School District Association (3/3/82) PERB Decision No. 197 supports the argument that the exclusive representative has a duty to provide financial information to employees upon request. King City, however did not hold that exclusive representatives owe a duty of disclosure to individual employees other than the annual financial report required by the SEERA². Thus, no prima facie violation of SEERA is presented.

²The section referenced by Charging Party is contained in part on page 28 of that decision and reads:

The Board recognizes that detailed information concerning the use of service fees may be with the -representative

Ronald A. Zumbrun
Anthony T. Caso
May 1. 1985
Page 6

Allegation No. 6

Charging Party alleges that CAFDO has failed to provide a hearing prior to the deduction of fair share fees from Mr. Eckstein's salary. As discussed above, CAFDO is not responsible for the deduction of the agency fee and, therefore, is not responsible to provide a hearing prior to the deduction of the agency fee. This allegation is more correctly directed to the exclusive representative. CAUSE.

For these reasons, charge number S-CO-49-S, as presently written, does not state a prima facie case. If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the charge accordingly. The amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before May 8, 1985. I

organization's exclusive knowledge. Nevertheless, sufficient information is almost always available to nonmembers. Insurance programs, philanthropic activities, social events, and political activity, as well as preparation for and the progress of collective negotiations, are usually publicized in organizational literature and openly discussed among unit employees and may be reported in local media. Charges based on such information, even if made upon the information and belief of the charging party, may suffice to establish a prima facie basis for issuance of a complaint. Further, a complete report of its financial transactions must be filed with PERB annually by each exclusive representative and, as a public document, would be available to nonmembers (section 3546.5 and Rule 32125).

Ronald A. Zumbrun
Anthony T. Caso
May 1. 1985
Page 7

shall dismiss your charge. If you have any questions on **how** to proceed, please call me at (916) 322-3196.

Sincerely yours.

Robert Thompson
Regional Attorney.